

CORRECTED REPRINT

HOUSE No. 4306

House bill No. 4306, as reported by the committee on Financial Services, as amended by the House, as changed by the committee on Bills in the Third Reading and as passed to be engrossed by the House. October 18, 2007.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT PROTECTING AND PRESERVING HOME OWNERSHIP.

1 *Whereas*, The deferred operation of this act would tend to
2 defeat its purpose, which is to provide forthwith mortgage
3 protection for existing and new home owners, therefore it is
4 hereby declared to be an emergency law, necessary for the
5 immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. To provide for certain unanticipated obligations
2 of the commonwealth, to provide for an alteration of purpose for
3 current appropriations and to meet certain requirements of law,
4 the sums set forth in this section are hereby appropriated from the
5 General Fund unless specifically designated otherwise in this
6 section for the several purposes and subject to the conditions
7 specified in this section, and subject to the laws regulating the dis-
8 bursement of public funds for the fiscal year ending June 30,
9 2008. These sums shall be in addition to any amounts previously
10 appropriated and made available for the purposes of said items.

7006-0011 For the costs incurred by the division of banks associated
 with licensure of loan originators pursuant to said chapter
 255F; provided, that the division may expend revenues in
 an amount not to exceed \$5,000,000 from the revenue
 received from administrative fees associated with said
 licensure fees and from civil administrative penalties pur-
 suant to the provisions of chapter 255F of the General
 Laws; provided that, \$2,000,000 shall be expended from
 such revenue as grants for the operation of a pilot program

for best lending practices, first-time homeowner counseling for non-traditional loans and 10 or more foreclosure education centers pursuant to section 13 of this act and that the grants shall be awarded through a competitive application process under criteria created by the division and that no funds shall be expended from this item in the AA object class for the compensation of state employees for such program; and provided further, that notwithstanding any general or special law to the contrary, for the purpose of accommodating timing discrepancies between the receipt of revenues and related expenditures, the commissioner may incur expenses and the comptroller may certify for payment the amounts not to exceed the lower of this authorization or the most recent revenue estimate, as reported in the state accounting system..... 5,000,000

1 SECTION 2. Chapter 183 of the General Laws is hereby
2 amended by inserting after section 6C the following section:—
3 Section 6D. Every mortgage and assignment of mortgage
4 secured by residential property, as defined in section 1 of
5 chapter 255E, presented for record, in which a mortgage broker,
6 as defined in said section 1 of said chapter 255E, is involved shall
7 contain or have endorsed upon it the name, post office address and
8 license number of the mortgage broker and, if applicable, the
9 mortgage loan originator, as defined in section 1 of chapter 255F,
10 responsible for placing the mortgage loan with the mortgagee.
11 This endorsement, or notation that no mortgage broker or mort-
12 gage loan originator was involved in the mortgage, if known, shall
13 be recorded as part of the mortgage or assignment of mortgage.
14 Failure to comply with this section shall not affect the validity of
15 any mortgage or the recording of any mortgage or assignment of
16 mortgage.

1 SECTION 3. Section 63A of said chapter 183, as so appearing,
2 is hereby amended by inserting after the word “interest”, in line 2,
3 the following words:— , change an adjustable or variable rate to a
4 fixed rate.

1 SECTION 4. Said section 63A of said chapter 183, as so
2 appearing, is hereby further amended by striking out, in line 44,
3 the words “one-half of”.

1 SECTION 5. Chapter 184 of the General Laws is hereby
2 amended by inserting after section 17B the following section:—

3 Section 17B½. No mortgagee who makes a loan to a first-time
4 home loan borrower, to be secured by a mortgage on owner-
5 occupied, 1 to 4 family real estate in the commonwealth, shall
6 make a subprime loan at a variable or adjustable rate of interest
7 unless the mortgagor affirmatively opts in writing for the variable
8 or adjustable rate subprime loan and receives certification from a
9 counselor with a third-party nonprofit organization that the mort-
10 gator has received counseling in person on the advisability of the
11 loan transaction; provided further that said third party nonprofit
12 organization shall have been approved by: (1) the United States
13 Department of Housing and Urban Development; (2) a housing
14 financing agency of the commonwealth; (3) the Massachusetts
15 Homeownership Collaborative; (4) or the regulatory agency which
16 has jurisdiction over the creditor. The commissioner shall main-
17 tain a list of approved counseling programs. At or before closing
18 such a loan, the mortgagee shall obtain evidence that the mort-
19 gator has completed an approved counseling program. If such
20 subprime mortgage loan is made by a mortgagee in violation of
21 this section, the variable or adjustable rate terms of the loan shall
22 not be enforceable and the mortgagee shall only be entitled to col-
23 lect an interest rate equal to the lesser of the original interest rate,
24 including any discounted rate, or the current adjusted interest rate
25 throughout the remaining term of the loan. The commissioner of
26 banks shall issue directives or guidelines or adopt regulations to
27 administer and carry out this section and to further define the
28 terms used in this section.

1 SECTION 6. Section 13 of chapter 186 of the General Laws,
2 as appearing in the 2006 Official Edition, is hereby amended by
3 inserting after the word “transfer”, in line 17, the following
4 word:—, foreclosure.

1 SECTION 7. Said chapter 186, is hereby further amended by
2 inserting after section 13 the following section:—

3 Section 13A. Upon a foreclosure of residential real property
4 pursuant to chapter 244, a tenant, occupying a dwelling unit under
5 an unexpired term for years or a lease for a definite term in effect
6 at the time of the foreclosure by sale, shall be deemed a tenant at
7 will. Foreclosure shall not affect the tenancy agreement of a

8 tenant whose rental payment is subsidized under state or federal
9 law.

1 SECTION 8. Chapter 244 of the General Laws is hereby
2 amended by inserting after section 35 the following section:—

3 Section 35A. (a) Any mortgagor of residential real property
4 located in the commonwealth consisting of a dwelling house with
5 accommodations for 4 or less separate households and occupied in
6 whole or in part by the mortgagor, shall have a 90 day right to
7 cure a default of a required payment as provided in such residen-
8 tial mortgage or note secured by such residential real property by
9 full payment of all amounts that are due without acceleration of
10 the maturity of the unpaid balance of such mortgage. The right to
11 cure a default of a required payment shall be granted no more than
12 10 times during the term of such mortgage note.

13 (b) The mortgagee, or anyone holding thereunder, shall not
14 accelerate maturity of the unpaid balance of such mortgage oblig-
15 ation or otherwise enforce the mortgage because of a default con-
16 sisting of the mortgagor's failure to make any such payment in
17 subsection (a) by any method authorized by this chapter or any
18 other law until at least 90 days after the date a written notice is
19 given by the mortgagee to the mortgagor.

20 Said notice shall be deemed to be delivered to the mortgagor
21 when delivered to the mortgagor or when mailed to the mortgagor
22 at the mortgagor's address last known to the mortgagee or anyone
23 holding thereunder.

24 (c) The notice required in subsection (b) shall inform the mort-
25 gagor of the following:—

26 (1) the nature of the default claimed on such mortgage of resi-
27 dential real property and of the mortgagor's right to cure the
28 default by paying the sum of money required to cure the default;

29 (2) the date by which the mortgagor shall cure the default to
30 avoid acceleration, a foreclosure or other action to seize the home,
31 which date shall not be less than 90 days after service of the
32 notice and the name, address and local or toll free telephone
33 number of a person to whom the payment or tender shall be made;

34 (3) that, if the mortgagor does not cure the default by the date
35 specified, the mortgagee, or anyone holding thereunder, may take

36 steps to terminate the mortgagor's ownership in the property by a
37 foreclosure proceeding or other action to seize the home;

38 (4) the name and address of the mortgagee, or anyone holding
39 thereunder, and the telephone number of a representative of the
40 mortgagee whom the mortgagor may contact if the mortgagor
41 disagrees with the mortgagee's assertion that a default has
42 occurred or the correctness of the mortgagee's calculation of the
43 amount required to cure the default;

44 (5) the name of any current and former mortgage broker or
45 mortgage loan originator for such mortgage note securing the
46 residential property; and

47 (6) that the mortgagor may be eligible for assistance from the
48 Massachusetts Housing Finance Agency and the division of banks
49 and the local or toll free telephone numbers the mortgagor may
50 call to request this assistance.

51 (d) To cure a default prior to acceleration under this section, a
52 mortgagor shall not be required to pay any charge, fee, or penalty
53 attributable to the exercise of the right to cure a default. The
54 mortgagor shall pay late fees as allowed pursuant to section 59 of
55 chapter 183 and per-diem interest to cure such default. The mort-
56 gagor shall not be liable for any attorneys' fees relating to the
57 mortgagor's default that are incurred by the mortgagee or anyone
58 holding thereunder prior to or during the period set forth in the
59 notice required by this section. The mortgagee, or anyone holding
60 thereunder, may also provide for reinstatement of the note after
61 the 90 day notice to cure has ended.

62 (e) A copy of the notice required by this section and an affi-
63 davit demonstrating compliance with this section shall be filed by
64 the mortgagee, or anyone holding thereunder, in any action or pro-
65 ceeding to foreclose on such residential real property.

66 (f) A copy of the notice required by this section shall also be
67 filed by the mortgagee, or anyone holding thereunder, with the
68 commissioner of banks. Additionally, if the residential property
69 securing the mortgage loan is sold at a foreclosure sale, the mort-
70 gagee, or anyone holding thereunder, shall notify the commis-
71 sioner of banks, in writing, of the date of the foreclosure sale and
72 the purchase price obtained at the sale.

1 SECTION 9. Section 2 of chapter 255E of the General Laws,
2 as appearing in the 2006 Official Edition, is hereby amended by
3 striking out, in lines 34 to 39, inclusive, the words “, or to any
4 nonprofit agency or corporation incorporated under the laws of
5 the commonwealth for the purpose of assisting low to moderate
6 income households in the purchase or rehabilitation of family resi-
7 dences of four units or less and which holds tax-exempt status
8 granted under the provisions of Section 501(c)(3) or 501(c)4 of
9 the Internal Revenue Code”.

1 SECTION 10. Section 8 of said chapter 255E, as so appearing,
2 is hereby amended by striking out the third paragraph and
3 inserting in place thereof the following 7 paragraphs:—

4 The commissioner shall inspect a licensee’s relevant records
5 and evidence of compliance with the provisions of this chapter or
6 any rule or regulation issued hereunder and with any other law,
7 rule or regulation applicable to the conduct of the business for
8 which it is licensed under this chapter. For the purposes of such
9 inspection, said commissioner or a representative of the commis-
10 sioner shall have access to the offices and place of business,
11 books, accounts, papers, records and files of all such licensees.
12 Said commissioner, and any person designated by him, may
13 require the attendance and testimony of any person whom the
14 commissioner deems necessary relative to the conduct and opera-
15 tion of such business. The total cost for any such inspection,
16 which shall be paid by the licensee within 30 days after the receipt
17 of an invoice therefore, shall be in accordance with fees deter-
18 mined annually by the commissioner of administration pursuant to
19 section 3B of chapter 7, including expenses for necessary travel
20 outside the commonwealth for the purposes of conducting such
21 inspections.

22 During the course of such inspection a mortgage lender that has
23 made 50 or more home mortgage loans in the last calendar year
24 shall be examined for its compliance with fair lending laws
25 including but not limited to the requirements of the federal Equal
26 Credit Opportunity Act, Home Mortgage Disclosure Act, and the
27 Predatory Home Loan Practices Act. Such examination shall also
28 include an evaluation of such mortgage lender’s: (a) origination of
29 loans and other efforts to assist low and moderate income resi-

30 dents, without distinction, to be able to acquire or to remain in
31 affordable housing at rates and terms that are reasonable consid-
32 ering the lender's history with similarly situated borrowers, the
33 availability of mortgage loan products suitable for such bor-
34 rowers, and consistency with safe and sound business practices
35 (b) origination of loans and other efforts to assist low and mod-
36 erate income residents' ability to acquire or to remain in afford-
37 able housing; (c) origination of loans that show an undue
38 concentration and a systematic pattern of lending resulting in the
39 loss of affordable housing units; (d) efforts working with delin-
40 quent residential mortgage customers to facilitate a resolution of
41 the delinquency; and (e) other efforts, including public notice of
42 the scheduling of examinations and the right of interested parties
43 to submit written comments relative to any such examination to
44 the commissioner, as, in the judgment of the commissioner, rea-
45 sonably bear upon the extent to which a mortgage lender is com-
46 plying with the requirements of fair lending laws and helping to
47 meet the mortgage loan credit needs of communities in the com-
48 monwealth.

49 Upon the completion of such examination, the commissioner
50 shall prepare a written evaluation of such lender's record of per-
51 formance, which shall be open to public inspection upon request
52 and said written evaluation shall include: (a) the assessment fac-
53 tors utilized to determine the mortgage lender's descriptive rating;
54 (b) the commissioner's conclusions with respect to each such
55 assessment factor; (c) a discussion of the facts supporting such
56 conclusions; and (d) the mortgage lender's descriptive rating and
57 the basis therefor.

58 Based upon such examination, the mortgage lender shall be
59 assigned one of the following descriptive ratings: (a) outstanding
60 record of performance in meeting the mortgage loan credit needs
61 of communities in the commonwealth; (b) high satisfactory record
62 of performance in meeting the mortgage loan credit needs of com-
63 munities in the commonwealth; (c) satisfactory record of perfor-
64 mance in meeting the mortgage loan credit needs of communities
65 in the commonwealth; (d) needs to improve record of performance
66 in meeting the mortgage loan credit needs of communities in the
67 commonwealth; or (e) substantial noncompliance in meeting the
68 mortgage loan credit needs of communities in the commonwealth.

69 Notwithstanding the foregoing, the commissioner may establish
70 an alternative examination procedure for any mortgage lender,
71 which, as of the most recent examination, has been assigned a
72 rating of outstanding or high satisfactory for its record of perfor-
73 mance in meeting its community mortgage loan credit needs.

74 In considering an application from a licensed mortgage lender
75 for a renewal of a license under this chapter, the commissioner
76 shall consider, but shall not be limited to, the record of perfor-
77 mance of any such lender in accordance with this section. Said
78 record of performance may be the basis for the denial of any such
79 renewal application.

80 For the purposes of this section, no mortgage lender may
81 include a loan origination or loan purchase for consideration as
82 part of its examination under this section if another mortgage
83 lender claims the same loan origination or purchase for its review
84 under this section or under section 14 of chapter 167.

85 The commissioner shall adopt regulations implementing the
86 requirements of this section.

1 SECTION 11. Section 10 of said chapter 255E, as so
2 appearing, is hereby amended by striking out the first sentence
3 and inserting in place thereof the following sentence:— Whoever
4 violates any provision of section 2 or any rule or regulation made
5 thereunder by the commissioner shall be punished by a fine of not
6 more than \$2,000 or by imprisonment for not more than 2 and
7 one-half years in a house of correction or by imprisonment for not
8 more than 5 years in the state prison, or by both such fine and
9 imprisonment.

1 SECTION 12. The General Laws are hereby amended by
2 inserting after chapter 255E the following chapter:—

3 **CHAPTER 255F.**
4 **LICENSING OF MORTGAGE LOAN ORIGINATORS.**

5 Section 1. As used in this chapter, the following words shall,
6 unless the context otherwise requires, have the following mean-
7 ings:—

8 “Commissioner”, the commissioner of banks.

9 “Division”, the division of banks.

10 “Entity”, a person or entity that is a licensee under
11 chapter 255E, as regulated by the division.

12 “Mortgage loan originator”, a natural person who:— (a) is
13 employed by or associated with 1 and not more than 1 entity; and
14 (b) negotiates, solicits, arranges, provides or accepts residential
15 mortgage loan applications, or assists consumers in completing
16 such applications, except that employees whose responsibilities
17 are limited to clerical and administrative tasks and who do not
18 solicit borrowers, accept applications, or negotiate the terms of
19 residential mortgage loans on behalf of the employer shall not be
20 considered mortgage loan originators and do not require licenses.

21 “Mortgage loan”, a loan or an extension of credit, including,
22 but not limited to, an extension of credit pursuant to a contract or
23 an assigned contract for the sale of goods or services, made to a
24 natural person, the proceeds of which are to be used primarily for
25 personal, family or household purposes, and which is secured
26 wholly or partially by a mortgage on residential property.

27 “Residential property”, real property located in the common-
28 wealth having thereon a dwelling house with accommodations for
29 4 or less separate households and occupied, or to be occupied, in
30 whole or in part by the obligor on the mortgage debt.

31 Section 2. No natural person shall act as a mortgage loan origi-
32 nator unless such person has first obtained a mortgage loan origi-
33 nator license from the commissioner. A natural person who meets
34 the definition of a mortgage loan originator prior to enactment of
35 this chapter shall file an application, comply with all the require-
36 ments of this chapter and obtain a license from the commissioner
37 within 180 days of the enactment of this chapter without being
38 required to comply with subsection (b) of section 3. An entity
39 shall not knowingly employ or retain a mortgage loan originator
40 unless the mortgage loan originator is licensed under this chapter.

41 Section 3. (a) The application for a mortgage loan originator
42 license shall be in the form prescribed by the commissioner and
43 shall contain the name, address and license number of the entity
44 with whom a mortgage loan originator is or will be employed or
45 associated with and other information as the commissioner may
46 require, including evidence of compliance with subsection (b).
47 The application shall also include a description of the activities of

48 the applicant, in such detail and for such periods as the commis-
49 sioner may require, and such further information as the commis-
50 sioner may require. The commissioner may require a background
51 investigation of each applicant for a mortgage loan originator
52 license by means of fingerprint checks by the criminal history
53 systems board pursuant to section 172 of chapter 6, and the
54 Federal Bureau of Investigation for state and national criminal
55 history records checks. The information obtained thereby may be
56 used by the commissioner to determine the applicant's eligibility
57 for licensing under this chapter. Receipt of criminal history
58 record information by a private entity is prohibited. Each applica-
59 tion for a license shall be accomplished by an investigation fee.
60 Investigation and license fees shall be determined annually by the
61 secretary of administration under the provisions of section 3B of
62 chapter 7, provided, that such total annual fees shall be no less
63 than \$500.

64 (b) An applicant shall have completed a residential mortgage
65 lending course, approved by the division, not later than the 2 year
66 period immediately preceding the date of the application.

67 Section 4. If the commissioner finds that the financial respon-
68 sibility, character, reputation, integrity and general fitness of the
69 applicant is such as to warrant belief that the applicant will act
70 honestly, fairly, soundly and efficiently in the public interest,
71 consistent with the purposes of this chapter, the commissioner
72 shall issue the applicant a license to engage in the business of a
73 mortgage loan originator upon payment of the required fees. If
74 the commissioner shall not so find, or if the applicant's criminal
75 history demonstrates any felony criminal convictions or other con-
76 victions or admissions to sufficient facts involving fraud or if the
77 applicant has had any adverse civil judgments involving fraudu-
78 lent dealings, the commissioner shall not issue a license and shall
79 notify the applicant of the denial. Within 20 days thereafter, the
80 commissioner shall enter upon the division's records a written
81 decision and findings containing the reasons supporting the denial
82 and shall forthwith give written notice thereof by registered mail
83 to the applicant. Within 30 days after receipt of such notice, the
84 applicant may seek judicial review of the denial in accordance
85 with section 14 of chapter 30A.

86 Section 5. A mortgage loan originator may transact business
87 only for an employing entity. Each original license issued to a

88 mortgage loan originator must be provided to and maintained by
89 the employing entity at the entity's main office. If the employ-
90 ment of a mortgage loan originator is terminated, the entity shall
91 return the mortgage loan originator's license to the division within
92 5 business days after termination. The reason for termination
93 shall be given in a format determined in rules and regulations of
94 the commissioner. For a period of 1 year after the termination of
95 employment, the mortgage loan originator may request the
96 re-assignment of the license to another entity by submitting an
97 application to the division, along with a fee established by the
98 division by rule. The return of the license of any mortgage loan
99 originator to the division that is not re-assigned to another entity
100 terminates the right of the mortgage loan originator to engage in
101 any residential mortgage loan origination activity until division
102 procedures have been followed to reactivate such license. The
103 license of any mortgage loan originator that has been returned to
104 the division and not re-assigned to another entity within 1 year of
105 termination of employment shall be cancelled.

106 Each license shall state the name of the mortgage loan origi-
107 nator licensee and the name and main office address of the entity
108 employing such mortgage loan originator.

109 The commissioner may establish an expedited re-assignment
110 process of a mortgage loan originator's license to another entity if
111 the reason for such re-assignment is directly related to increased
112 responsibilities or compensation.

113 The commissioner may adopt, amend or repeal rules and regu-
114 lations to aid in the administration and enforcement of this
115 chapter.

116 Section 6. Each application for a license shall be accompanied
117 by an investigation fee. Investigation and license fees shall be
118 determined annually by the secretary of administration under
119 section 3B of chapter 7 provided that such total annual fees shall
120 be no less than \$500. The license of a mortgage loan originator
121 shall expire annually. Each licensee, shall annually, on or before a
122 date to be determined by the commissioner, submit a license
123 renewal application. Said license renewal application shall be on
124 a form prescribed by the commissioner, signed under the pains
125 and penalties of perjury, containing such information as the com-
126 missioner may require, including evidence satisfactory to the

127 commissioner that the licensee has completed at least 8 hours of
128 residential mortgage lending continuing education courses
129 approved by the division during the 12 months immediately pre-
130 ceding license renewal. Failure of the licensee to satisfy the con-
131 tinuing education requirement shall render the mortgage loan
132 originator ineligible for renewal and such license shall be deemed
133 to be inactive. A mortgage loan originator neglecting to file such
134 application or failing to amend the same within 15 days of notice
135 from the commissioner directing the same shall be deemed inac-
136 tive. Inactive mortgage loan originators are prohibited from
137 engaging in business as a mortgage loan originator.

138 Section 7. The commissioner may suspend, revoke or refuse to
139 renew any license issued pursuant to this chapter if the commis-
140 sioner finds that:— (1) the licensee has violated this chapter or
141 any rule or regulation adopted hereunder, or any other law applic-
142 able to the conduct of its business; (2) any fact or condition exists
143 which, if it had existed at the time of the original application for
144 such license, would have warranted the commissioner in refusing
145 to issue such license; or (3) the licensee has committed any fraud,
146 misappropriated funds or misrepresented any of the material par-
147 ticulars of a mortgage loan transaction.

148 Except as provided in section 8, no license shall be revoked or
149 suspended except after notice and a hearing thereon pursuant to
150 chapter 30A. Any order issued pursuant to this section shall be
151 subject to judicial review in accordance with section 14 of said
152 chapter 30A.

153 A licensee may surrender a license by delivering to the com-
154 missioner written notice that it hereby surrenders such license, but
155 such surrender shall not affect the civil or criminal liability of the
156 licensee for acts committed before such surrender.

157 Section 8. (a) If the commissioner determines, after giving
158 notice of and opportunity for a hearing, that a licensee has
159 engaged in an act or practice constituting a violation of a provi-
160 sion of this chapter or a rule, regulation or order hereunder, the
161 commissioner may order such licensee to cease and desist from
162 such unlawful act or practice and take such affirmative action as
163 in the commissioner's judgment will affect the purposes of this
164 chapter.

165 (b) If the commissioner makes written findings of fact that the
166 public interest will be irreparably harmed by delay in issuing an

167 order under subsection (a) the commissioner may issue a tempo-
168 rary cease and desist order. Upon the entry of a temporary cease
169 and desist order, the commissioner shall promptly notify, in
170 writing, the licensee and the employing entity affected thereby
171 that such order has been so entered, the reasons therefore, and that
172 within 20 days after the receipt of a written request from such
173 licensee, the matter will be scheduled for hearing to determine
174 whether such temporary order shall become permanent and final.
175 If no such hearing is requested and none is ordered by the com-
176 missioner, the order shall remain in effect until it is modified or
177 vacated by the commissioner. If a hearing is requested or ordered,
178 the commissioner, after giving notice of and opportunity for a
179 hearing to the licensee and the employing entity subject to said
180 order shall, by written findings of fact and conclusions of law,
181 vacate, modify or make permanent the order.

182 (c) No order under this section, except an order issued pursuant
183 to subsection (b), may be entered without prior notice of and
184 opportunity for a hearing. The commissioner may vacate or
185 modify an order under this section upon finding that the condi-
186 tions which required such an order have changed and that it is in
187 the public interest to so vacate or modify.

188 Any order issued pursuant to this section shall be subject to
189 judicial review in accordance with section 14 of chapter 30A.

190 Section 9. The commissioner may enforce the provisions of
191 this chapter, or restrain any violations thereof, by filing a civil
192 action in any court of competent jurisdiction.

193 Section 10. Whoever violates any provision of section 2 or
194 any rule or regulation thereunder by the commissioner shall be
195 punished by a fine of not more than \$2,000 or by imprisonment
196 for not more than 2 and one-half years in a house of correction or
197 by imprisonment for not more than 5 years in the state prison or
198 by both such fine and imprisonment. Each day such violation
199 occurs or continues shall be deemed a separate offense. The
200 penalty provision of this section shall be in addition to any other
201 law applicable to a licensee or other person for violating section 2
202 or any rule or regulation made thereunder.

203 Section 11. (a) Whenever the commissioner finds that any
204 licensee or exempt person under section 2 has violated this
205 chapter or any rule or regulation adopted thereunder, or any other

206 law of the commonwealth applicable to the conduct of a mortgage
207 loan originator on residential property in the commonwealth, the
208 commissioner may, by order, in addition to any other action autho-
209 rized under this chapter or any rule or regulation made thereunder,
210 impose a penalty upon the person which shall not exceed \$5,000
211 for each violation up to a maximum of \$100,000 for such viola-
212 tion plus the costs of investigation. The commissioner may
213 impose a penalty which shall not exceed \$5,000 for each violation
214 of this chapter, or any rule or regulation adopted thereunder, by a
215 person other than a licensee, plus the costs of investigation.

216 (b) Nothing in this section shall limit the right of any individual
217 or entity who has been injured as a result of any violation of this
218 chapter by a licensee, or any person other than a licensee, to bring
219 an action to recover damages or restitution in a court of competent
220 jurisdiction.

221 (c) Any findings or order issued by the commissioner pursuant
222 to this section shall be subject to review as provided in
223 chapter 30A.

224 Section 12. (a) Whenever the commissioner determines that
225 any person has, directly or indirectly, violated any section of this
226 chapter or any rule or regulation adopted thereunder, applicable to
227 the conduct of a mortgage loan originator on residential property
228 in the commonwealth, or any order issued by the commissioner
229 under this chapter or any written agreement entered between the
230 licensee and the commissioner, the commissioner may serve upon
231 that person a written notice of intention:—

232 (1) to prohibit the person from performing in the capacity of a
233 principal employee on behalf of any licensee for a period of time
234 that the commissioner considers necessary;

235 (2) to prohibit the person from applying for or obtaining a
236 license from the commissioner for a period up to 36 months
237 following the effective date of an order issued under
238 subsection (b) or (c); or

239 (3) to prohibit the person from any further participation, in any
240 manner, as a mortgage loan originator in the commonwealth or to
241 prohibit the person from being employed by, an agent of, or oper-
242 ating on behalf of a licensee under this chapter or any other busi-
243 ness which requires a license from the commissioner.

244 (b) A written notice issued under subsection (a) shall contain a
245 written statement of the facts that support the prohibition and shall
246 give notice of an opportunity for a hearing to be held thereon. The
247 hearing shall be fixed for a date not more than 30 days after the
248 date of service upon the commissioner of the request for a
249 hearing. If the person fails to submit a request for a hearing
250 within 20 days of service of notice under subsection (a), or other-
251 wise fails to appear in person or by a duly authorized representa-
252 tive, the party shall be considered to have consented to the
253 issuance of an order of prohibition in accordance with the notice.

254 (c) In the event of the consent under subsection (b), or if after a
255 hearing the commissioner finds that any of the grounds specified
256 in the notice have been established, the commissioner may issue
257 an order of prohibition in accordance with subsection (a) as the
258 commissioner finds appropriate.

259 (d) An order issued under subsection (b) or (c) shall be effec-
260 tive upon service upon the person. The commissioner shall also
261 serve a copy of the order upon the licensee of which the person is
262 an employee or on whose behalf the person is performing. The
263 order shall remain in effect and enforceable until it is modified,
264 terminated, suspended, or set aside by the commissioner or a court
265 of competent jurisdiction.

266 (e) Except as consented to in writing by the commissioner, any
267 person who, pursuant to an order issued under subsection (b) or
268 (c), has been prohibited from participating in whole or in part as a
269 mortgage loan originator may not, while the order is in effect,
270 continue or commence to perform in the capacity of a mortgage
271 loan originator, or otherwise participate in any manner, if so pro-
272 hibited by order of the commissioner, in the conduct of the affairs
273 of:—

274 (1) any licensee under this chapter;

275 (2) any other business which requires a license from the
276 commissioner; or

277 (3) any bank, as defined under section 1 of chapter 167 or any
278 subsidiary thereof.

279 Section 13. The commissioner may suspend, revoke or refuse
280 to renew the license of the entity employing any licensed mort-
281 gage originator if said commissioner finds that: (a) the entity
282 knew or should have known that the mortgage loan originator has

283 violated this chapter or any rule or regulation adopted hereunder,
284 or any other law applicable to the conduct of its business; (b) the
285 entity knew of any fact or condition to exist which, if it had
286 existed at the time of the original application for such license,
287 would have warranted the commissioner in refusing to issue such
288 license; (c) the mortgage loan originator has committed any
289 fraud, misappropriated funds or misrepresented any of the mate-
290 rial particulars of a mortgage loan transaction approved by the
291 entity; or (d) has failed to comply with the reporting requirements
292 set forth in section 15.

293 Section 14. Each licensee shall, when directed by the commis-
294 sioner, permit the commissioner or a duly authorized representa-
295 tive to inspect its relevant records and evidence of compliance
296 with the provisions of this chapter or any rule or regulation issued
297 hereunder and with any other law, rule and regulation applicable
298 to the conduct of a mortgage loan originator licensed under this
299 chapter.

300 Section 15. An entity employing any licensed mortgage origi-
301 nator shall annually report the following to the commissioner of
302 banks:— (1) the total number of loans originated by all such
303 licensees; (2) the geographic distribution of such loans; (3) the
304 number of defaults of such loans; and (4) any such other informa-
305 tion the commissioner may require consistent with the provisions
306 of this chapter.

1 SECTION 13. The division of banks, in consultation with the
2 city of Boston, the department of housing and community devel-
3 opment, the Massachusetts Housing Finance Agency and the
4 Massachusetts Bankers Association, shall develop a pilot program
5 to identify best practices for financial institutions to provide first
6 time homebuyer loans, to provide for foreclosure prevention for
7 at-risk homeowners, and to assist approved counseling programs
8 with in-person counseling pursuant to section 17B½ of
9 chapter 184 of the General Laws, as provided for in item 7006-
10 0011 in section 1.

11 Such pilot program, shall also provide for best lending and bor-
12 rowing practices for consumers and mortgagees in cities or towns
13 with: (1) housing units within low or moderate income census
14 tracts as defined by the United States census bureau; or (2) high

15 foreclosure activity as measured by residential foreclosure peti-
16 tions filed over the total number of 1 to 4 family housing units
17 within such city or town. Such guidelines and counseling shall
18 provide for best practices that:— attain a minimal risk of high
19 cost lending; have a demonstrated ability to avoid foreclosures;
20 have a demonstrated record of pricing that ensures uniformity of
21 lending; avoid a disparity of pricing in low and moderate income
22 census tracts; and maintain foreclosure prevention practices that
23 meet or exceed standards met by government sponsored enter-
24 prises.

25 Such pilot program shall also provide for foreclosure training to
26 10 or more foreclosure education centers for counseling and assis-
27 tance to owner occupied 1 to 4 family dwellings in such geo-
28 graphic areas.

29 On or before December 31, 2008 the division of banks shall
30 report the results of such pilot program to the general court.

1 SECTION 14. The division of banks shall maintain a foreclo-
2 sure database that shall include, but not be limited to, foreclosure
3 activity by mortgage lenders, mortgage holders and mortgage
4 servicers, as well as the mortgage brokers and loan originators
5 who placed these mortgage loans in the commonwealth, including
6 information relative to the original mortgagee, and any subsequent
7 assignee. Based on the information received, the commissioner of
8 banks shall produce a report at least annually to track develop-
9 ments and trends of mortgage foreclosure on residential property
10 in the commonwealth, including but not limited to, an analysis of
11 the pre-foreclosure notices submitted to the commissioner com-
12 pared to the final foreclosure notices, and any trends or patterns
13 relative to the geographic location of the residential properties,
14 and interest rates. The report shall be available to the public upon
15 request, shall be filed with the joint committee on financial serv-
16 ices and the commissioner shall make it available in any other
17 manner that the commissioner may choose.

1 SECTION 15. Section 5 shall take effect on December 31,
2 2007.

1 SECTION 16. Section 8 shall apply to all mortgages of resi-
2 dential real property located in the commonwealth consisting of a
3 dwelling house with accommodations for 4 or less separate house-
4 holds and occupied in whole or in part by the mortgagor which
5 secures a loan before, on or after the effective date of said section;
6 provided, that said section 8 shall not apply to such mortgages
7 accelerated or whose statutory condition has been voided under
8 the terms of the mortgage to secure the note, prior to the effective
9 date of section 35A of chapter 244 of the General Laws.

1 SECTION 17. Section 12 shall take effect on May 1, 2008.